IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

S.B. CIVIL WRIT PETITION NO.7154/2006.

Narsingh Taneja
Vs.
Brij Kishore Sharma & Ors.

Date of Order : 4/1/2008.

PRESENT
HON'BLE MR.JUSTICE M.N. BHANDARI

Dr. P.C. Jain for the petitioner.
Shri D.K. Bhardwaj for the respondents.

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BY THE COURT:-

By this writ petition, the petitioner has challenged the order dated 4/8/2006. It is contended that non-petitioner moved an application under Section 9 of the Rajasthan Rent Control Act, 2001. Notice of the said application was issued however, it is alleged that it was not served on the petitioner who is a government servant and serving at Tejpur (Assam). Since ex-parte proceedings had been initiated against him without serving on him the notice through postal service, petitioner moved an application for setting aside the ex-parte proceedings. Application so moved by

the petitioner was allowed by the court below by the impugned-order however, while setting aside the ex-parte proceedings, petitioner was allowed to participate in the proceedings prospectively and thereby his right to submit written-statement stood implied forfeited. Against this, petitioner has preferred this writ petition.

2) Learned counsel for the respondents has serious objection in acceptance of the prayer of the petitioner on the ground that the notices were in fact served on the petitioner and, therefore, there is no reason to allow him to file written-statement.

3) I have considered the rival submissions of the parties and gone through the order impugned.

4) The perusal of the impugned-order reveals that the learned court below had recorded a finding in para 7 as per the provisions of Code of Civil Procedure more specifically Order 9 Rule 11 CPC where there exist more than one defendant and out of many defendants, one defendant is not present then also, matter may be proceed and the court will pass an appropriate order at the final

stage. It has further been observed that apart from defendant No.2 i.e. the petitioner, there exist five more defendants who have also filed their written-statements and it is not correct on the part of the defendants to state that their rights are different than the other defendants. The court lastly held that the ex-parte proceedings against the defendant No.2 were initiated only after taking note of the provisions of Order 9 Rule 11 CPC. The learned court however taking note of the fact that since defendant No.2 has now come before the court therefore, he is permitted to participate in the proceedings irrespective of the fact that earlier order passed on 24/1/2004 be treated as if no ex-parte proceedings were initiated against the said defendant.

5) Considering the reasons given in the impugned-order, I find that the court below itself has passed an order that ex-parte proceedings initiated against defendant No.2 vide order dated 24/1/2004 should be read as if no such ex-parte proceedings were ordered to be initiated. If such order has been passed by the court, then the order

cannot justify to provide right of defence to the defendants only from perspective dates. If the order of initiation of ex-parte proceedings was not just and proper or it was treated to be led as if no ex-parte proceedings was initiated against the defendant No.2, then the court cannot justify its order further to provide only perspective participation to the defendant No.2 in the proceedings and thereby taking away his right to file written-statement.

6) Thus, in my opinion, the impugned-order passed by the court below permitting only perspective participation of defendant No.2 in the proceedings is not justified and accordingly, the impugned order is set-aside only to the extent it permit the petitioners for perspective participation in the proceedings.

7) Accordingly, petitioner is directed to file written-statement within a period of one month from today and if such written-statement is filed within time, it is expected from the court below to expedite the matter.

The writ petition is allowed in view of

the direction given above.

(M.N. BHANDARI), J.

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